IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2364 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KL CHHATLANI

Versus

DIRECTOR INDIAN MEDICAL SYSTEM AND HOMEOPATHY

Appearance:

1. Special Civil Application No. 2364 of 2000

MR YH VYAS for Petitioner No. 1

MS REETA CHANDARANA ASST.GOVERNMENT PLEADER for Respondent No. 1

MR TRILOK J PATEL for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 15/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has complained

that he has not been paid the subsistence allowance for the period between August, 1994 to January, 1995, both months included. The petitioner has complained that he has made several representations to the respondent No.1, but so far neither his representations are rejected, nor the amount of subsistence allowance is released. It is not in dispute that the petitioner was under suspension pending Departmental enquiry while he was working as Professor in the respondent No.2 college. It is also not in dispute that the petitioner was ordered to be compulsorily retired with effect from 31.1.1995.

2. The stand of the respondent No.1 is that the petitioner was found to have been engaged in some private business and that therefore, he was not entitled to receive the subsistence allowance. The show cause notice dated 30th September, 1994 was also issued to the petitioner by the respondent No.1. The show cause notice was replied to by the petitioner on 10th October, 1994. The petitioner in the said reply has stated that he has entered into a Partnership deed on 20.1.1994, and the Partnership firm had also entered into an agreement for sale of land on 7.2.1994, however on coming to know of the Government Rules, the said agreement to sale was also cancelled on 5.8.1994, and the Partnership was also dissolved. He has further stated that he is not doing any other business and is therefore, entitled to receive the subsistence allowance.

3. Learned Counsel for the petitioner points out the letter dated 17th October, 1994, written by the Principal of the College to the respondent No.1 institution, wherein the said developments have been noted. It is stated that the subsistence allowance has not been paid to the petitioner from August, 1994. It is also recorded that the Partnership firm was dissolved and guidance is sought with respect to the payability of the subsistence allowance to the petitioner. Admittedly, no reply has been received in this regard and the petitioner is also not paid subsistence allowance for the above mentioned period.

4. There appears to be no dispute about the fact that after August, 1994, the petitioner was not involved in any business or employment. The respondents have not putforth any such case in the reply statement also. It is also not suggested that by virtue of involving himself in the Partnership business for some time; as per the terms of the suspension order or the Rules of employment the petitioner had disentitled himself from claiming subsistence allowance for all times to come. In that

view of the matter, prima-facie the case of the petitioner to secure subsistence allowance atleast for the period between August, 1994 till January, 1995 seems justified. However, in view of the fact that the respondents have yet to take a decision with respect to the payability of the subsistence allowance to the petitioner, I am inclined to relegate the petitioner to the respondent authorities. Accordingly, it is directed that the respondents, and in particular respondent No.1, to take a decision with respect to the claim of the petitioner for subsistence allowance for the aforesaid period, keeping in mind the observations made in this order. Such a decision shall be taken within a period of 4 weeks from the date of receipt of this order. If any approval or permission is to be taken from the Government, the respondent No.1 shall also take expeditious steps for the said purpose. It is expected that the Government will also take a decision if such need so arises, as early as possible. In view of these directions, the petition stands disposed of with a liberty to apply afresh in case of difficulty. The amount of Rs. 45,000/- deposited by the respondents before this Court shall be adjusted as per the order that may be passed by the respondents pursuant to this order.

The petition is disposed of accordingly. Rule is discharged with no order as to costs. Direct service permitted.

(Akil Kureshi, J.)

*/Mohandas